

EXHIBIT D

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In Re Flint Water Cases,

No.: 5:16-cv-10444-JEL-MKM
(consolidated)

Hon. Judith E. Levy

Magistrate Mona K. Majzoub

DECLARATION OF ARI KRESCH, ESQ.

I, Ari Kresch, Esq., under penalty of perjury, hereby affirm that the foregoing is true and correct:

1. My name is Ari Kresch, a partner at Kresch Legal Services PR PLLC.
2. I am an attorney duly licensed to practice law in the State of Michigan and the United States District Court for the Eastern District of Michigan.
3. I make this Declaration based upon my personal knowledge and information provided to me in the ordinary course of business. I affirm as detailed below that: 1) I have been provided access to the resources of Co-Liaison counsel to provide bone-lead testing to my clients who wanted one; 2) that the program was conducted in a highly professional manner; 3) that the program, developed by Aaron Specht PhD. and Dr. Michael Weitzman is a state-of-the art program to accurately

measure the presence of lead ingestion in one's body, while being cost effective and safe; 4) such tools are useful in the medical legal context for a settlement administrator to utilize to grade the injuries for the allocation of settlement funds; and, 5) the common benefit fee and the attorneys' fees application is both fair and reasonable to me and my clients.

4. I represent several thousand registered claimants in the Flint Water Contamination Litigation, including both minor children and adults. I share clients with Napoli Shkolnik PLLC, Levy Konigsberg, LLP, and the Law Offices of Marc Jay Bern.

5. After reading the proposed settlement agreement that was made public last year, I contacted the firms that had established a bone lead testing program. Those firms Napoli Shkolnik PLLC ("NS") and Levy Konigsberg, LLP ("LK") (or collectively the "Firm") agreed to share their work product and experts that they developed over the years to assist my clients in proving their cases whether for litigation or settlement purposes. The Bone Lead Testing Program (hereinafter the "Program") coordinated by the firms has been available to my clients. The firms assisted my office in establishing a system to communicate with my clients, to schedule appointments and conduct the tests necessary to ensure that my clients that I have co-counseled with Bern as well as NS and LK to get the full picture of their total exposure to lead.

6. As part of my process as a lawyer I wanted to also investigate the use of the bone lead testing. As part of that investigation, I learned that the program was set up under the leadership of Harvard's Aaron Specht and overseen by its Medical Director from New York University Dr. Michael Weitzman. From reading their bios I have learned that both have dedicated their lives to understanding childhood lead issues.

7. I have also learned XRF has been used to measure lead in the bone for more than 20 years. In *Getting the Lead out*, Dr. Linda Nie, associate professor of health science, says "X-ray fluorescence (XRF) is less invasive than blood testing and has been used to measure lead in bone for more than 20 years." Many major institutions around the country have fixed bone lead testing machines known as kXRF, including Harvard T.H. Chan School of Public Health, New York University Medical Center, Purdue University, Boston Children's Hospital, among others. Interestingly, the kXRF radiates the whole body for almost 30 minutes, while the portable XRF used in flint only radiates 1 centimeter for 3 minutes.

8. I trust the credentials of those health professionals that set up the program who represent that the Program operated by the firms was designed and is implemented with health and safety as the highest priority. The Program is committed to carrying out bone scans safely and with all possible measures taken to remove, or at least reduce, risks to the health, safety and welfare of the individuals

receiving the test and the staff at the Program. That is why I recommended to any of my clients who wanted to utilize this resource to participate.

9. Further, I have recently read Class Counsel Michael Pitt's letter to Judge Levy. The letter sets out what my research has also confirmed, that is the reliability in the bone scans as a safe and efficient way of securing the highest possible amount of compensation. See Exhibit A.

10. I have faith in the Bone Lead Testing Program is currently the most reliable, least invasive, most practical and cost-effective means of measuring long-term lead exposure and encourage all my clients to have a Bone Lead Test.

11. The firms have put in a great amount of effort and resources to ensure that Bone Lead Testing is available to my clients. They further informed me that they are making these tests available to unrepresented Flint residents. The unfortunate almost universal delay in blood testing has caused verification challenges that is scientifically addressed by this testing. All firms have been challenged on how to prove their case in court and this solution is the best and most practical that I've heard. Those who complain about the safety and efficacy of this testing fail to provide better alternatives or a scientific basis for their assertions.

12. It was represented to me that it took lots of research to find and propose bone lead testing to evaluate the plaintiffs' lead levels. The law firms established a program using the world's leading experts in portable XRF and doctors for specialize

in childhood lead exposure. They invested time and money to hire medical personnel, and access equipment. Therefore, I believe that the firms deserve to be paid for their well thought out efforts that provide a great benefit to the litigation, their clients, and mine that I have co-counseled with others including NS, LK and Bern. I also believe that such a program should not be “free” to all lawyers. These law firms were accommodating to my clients to use their well-run facility.

13. Lastly, I write this affirmation in support of co-liaison counsel’s application for common benefit attorneys’ fees and costs. I believe that the time reflected in Napoli Shkolnik and Levy Konigsberg’s fee applications (ECF Nos. 1458-3, 1458-4) are reasonable in amount and were necessary for the effective and efficient prosecution and resolution of the litigation. It is my opinion that Napoli Shkolnik and Levy Konigsberg have met and exceeded their duties as Co-Liaison Counsel for Individual Plaintiffs.

14. Co-Liaison Counsel have substantial experience in prosecuting and settling personal injury cases involving environmental exposure. This case required expertise in a very complex area of law, and Co-Liaison Counsel were uniquely qualified to provide that expertise.

15. Finally, I believe that the proposed Settlement provides extraordinary benefit to the people of Flint. By settling now, Claimants can take advantage of

remedies that, as a practical matter, would not be available or would potentially be worth less if the case had to be litigated through trial to a final judgment.

Dated: May 25, 2021

Signature: 
Ari Kresch, Esq

EXHIBIT A



Pitt McGehee
Palmer Bonanni & Rivers

Professional Corporation Attorneys & Counselors

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May 13, 2021

Via Email: Leslie.Calhoun@mied.uscourts.gov

Hon. Judith E. Levy
United States District Court Judge
Eastern District of Michigan
200 E Liberty St Ste 300
Ann Arbor, MI 48104-2129

Re: In Re Flint Water Cases
Case No. 16-10444

Dear Judge Levy:

I write Your Honor to address concerns raised by the objectors regarding the safety aspect of the portable x-ray fluorescence ("XRF") bone scan that is part of the MSA related to the Flint settlement with the State of Michigan, the City of Flint and other settled defendants. As the Court is aware the bone scan is a voluntary evaluation that a participant in the settlement may choose to undergo in order to obtain compensation in the settlement. In this context, the XRF scans are being performed solely for purposes of implementing the settlement.

The Court has already received research and information about bone scan administration, protocols and procedures in the letter submitted by Co-Liaison counsel. Co-Lead Class counsel has also consulted additional experts, Drs. Karl Jepsen at the University of Michigan and Dr. Andrew Todd at Mt. Sinai in New York. Both have confirmed that under the protocols cited by Dr. Specht, as set forth in the Co-Liaison counsel's letter of March 5 and studies cited therein, the use of the XRF bone scan procedure can be used in a safe manner for both children and adults. We understand from these experts that the procedure set forth by Dr. Specht is such that the radiation emitted during the test results in an effective dose that can be considered negligible for most individuals.

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As the Court is aware, I have and continue to fully support the terms and spirit of the settlement. Although I have not been informed as to manner in which Mr. Napoli has carried out his test center, as the Court knows, I have and continue to work diligently to establish an additional, safety compliant equivalent bone scan testing site to allow accessibility to all registrants who want to have the testing. I look forward to continuing to work with the Court and all counsel involved in the settlement in ensuring accessibility of the XRF bone scanning for those members of the Flint community who wish to have the bone scans performed.

Very truly yours,

PITT MCGEHEE PALMER BONANNI & RIVERS

A handwritten signature in blue ink, appearing to read "Michael L. Pitt", is positioned above the printed name.

Michael L. Pitt

MLP/rb